IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 8, 2007 Session

CLIFFORD DIXON, ET AL. v. KIRA COBB, ET AL.

Appeal from the Circuit Court for Williamson County
No. 02190 Russ Heldman, Judge

No. M2006-00850-COA-R3-CV - Filed on July 12, 2007

Husband and Wife filed a personal injury action against Driver for injuries allegedly sustained when Driver side-swiped Husband's vehicle while traveling on Interstate 40. At trial, Driver conceded liability but alleged that her conduct was not the legal cause of Husband's injuries. After hearing all the evidence, the jury awarded Plaintiffs zero damages. Plaintiffs appeal asserting various errors committed during the trial. Finding no material error below, we affirm the judgment of the trial court in all respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Alan C. Housholder, Nashville, Tennessee, for the appellants, Clifford Dixon and Faye Dixon.

John Thomas Feeney and Daniel A. Galiano, Nashville, Tennessee, for the appellees, Kira Cobb (Bettcher) and John Doe.

OPINION

On April 6, 2001, Mr. Clifford Dixon was traveling on Interstate 40 when Ms. Kira Cobb's vehicle side-swiped his pickup truck, causing him to collide into the center concrete wall. On April 6, 2002, Mr. Dixon and his wife filed an action against Ms. Cobb and her father for injuries allegedly resulting from the accident. On June 7, 2002, the Cobbs filed an answer asserting comparative fault, alleging that an unknown third party in a red vehicle forced Ms. Cobb into Mr. Dixon's vehicle. However, at the trial on January 19, 2006, Ms. Cobb admitted her fault in causing the accident but alleged that her conduct was not the legal cause of Mr. Dixon's injuries. At the conclusion of the trial, the jury awarded the Dixons zero damages on all claims including pain and suffering, medical bills, and loss of earning capacity.

The Dixons appeal alleging various errors committed during the trial including (1) charging the jury with negligence; (2) failing to charge the jury with negligence *per se* and turning a vehicle; (3) excluding mental and emotional pain and suffering from the jury charge; and (3) excluding from evidence portions of the deposition of Appellants' chiropractor. Appellants also allege that (1) there was no material evidence to support an award of zero damages; (2) the jury failed to follow the jury instructions on damages; and (3) they were prejudiced by Ms. Cobb's testimony that she was pregnant.

I. JURY INSTRUCTIONS

The determination of whether jury instructions are proper is a question of law. *Solomon v. First Am. Nat'l Bank of Nashville,* 774 S.W.2d 935, 940 (Tenn.Ct.App.1989). A trial court's conclusions of law are reviewed under a purely *de novo* standard, with no presumption of correctness provided to the conclusions below. *Fields v. State,* 40 S.W.3d 450, 457-58 (Tenn.2001).

"The necessity of jury instructions based on a clear and sound exposition of the law in order for a jury verdict predicated upon those instructions to stand is a long standing principle of Tennessee law." *Bara v. Clarksville Mem'l Health Sys., Inc.*, 104 S.W.3d 1, 3 (Tenn.Ct.App.2002). However, jury instructions need not be perfect in every detail. *Ladd by Ladd v. Honda Motor Co., Ltd.*, 939 S.W.2d 83, 94 (Tenn.Ct.App.1996). Instructions must be viewed as a whole with the challenged portion of the instructions being considered in light of its context. *Ladd by Ladd*, 939 S.W.2d at 94. And a single erroneous statement will not necessarily undermine proper instructions that, on the whole, fairly define the issues and do not mislead the jury. *Ladd by Ladd*, 939 S.W.2d at 94. Thus, a jury verdict will be reversed only if it can be shown that an instruction contains an inaccurate statement of the law or is confusing and when considering the charge of the court as a whole, the instruction more likely than not affected the outcome of the trial. *Bara*, 104 S.W.3d at 3.

The Dixons first argue that the trial court erred in charging the jury with negligence because Ms. Cobb admitted fault. The challenged jury instruction provided:

> A Plaintiff is entitled to recover compensation for an injury that was legally caused by the negligent conduct of a defendant. In this case, the Plaintiff has the burden of proving:
>
> 1. That the defendant was negligent; and
> 2. That the negligence was a legal cause of injury to the Plaintiff.

Appellants contend that instructing the jury that Plaintiffs carried the burden of proving that Ms. Cobb was negligent misled and confused the jury. However, the record reveals that the court also specifically instructed the jury that Ms. Cobb admitted liability. Said the court:

> The Defendant has admitted fault. As a result, the Defendant is responsible for any damages legally caused by that fault. A legal cause of loss or harm is one that in the natural and continuous sequence of events produces the loss or harm and without which would not have occurred.

It is well settled that the challenged instruction must be considered in the context of the complete instructions provided to the jury. *Ladd by Ladd*, 939 S.W.2d at 94. And an erroneous instruction will not be considered reversible error if the trial court explains or corrects it in other portions of the charge. *Ladd by Ladd*, 939 S.W.2d at 94. Although the negligence instruction was not necessary in this case, the court clarified any confusion which may have resulted therefrom by explaining to the jury that Ms. Cobb admitted fault and thus, only the damages caused by that fault were at issue. We therefore find no merit to Appellants' first assignment of error.

In a related argument, Appellants contend that because the trial court erroneously charged the jury with negligence, the court should have also charged the jury with negligence *per se*[1] and turning a vehicle.[2] It is well settled that a trial court should give a requested instruction "(1) if it is supported by the evidence, (2) if it embodies the party's theory of the case, (3) if it is a correct statement of the law, and (4) if its substance has not already been included in other portions of the charge." *Ladd by Ladd*, 939 S.W.2d at 102-3. In this case however, Appellants admit that they did not attempt to prove negligence since Ms. Cobb admitted liability. Because Appellants' requested instructions relate solely to the establishment of negligence, the instructions are not supported by the evidence nor do they embody Appellants' theory of the case. We therefore find no error in the court's refusal to charge the jury with such instructions.

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[1] The negligence *per se* instruction requested by Appellants provided:

> A person who violates a statute or ordinance is negligent. However, a person violating a statute or ordinance is not at fault unless you also find that the violation was a legal cause of the injury or damage for which claim has been made. Plaintiffs contend that the Defendants violated T.C.A. 55-8-123, a Tennessee statute, as reads as follows:
>
> "55-8-123. Driving on roadways laned for traffic - Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules, in addition to all others herewith, shall apply:
>
> > (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;"

[2] The turning a vehicle instruction requested by Appellants stated:

> A driver is not required to know that there is absolutely no chance of an accident before turning from a direct course or moving to the left or right on a public roadway. A driver is required to use the precaution that would satisfy a reasonably careful person that the turn or movement can be made safely under the circumstances.

The final instructional error alleged by Appellants concerns the failure of the trial court to specifically include mental and emotional pain and suffering as a recoverable element of Appellants' damages. The jury instruction concerning pain and suffering provided:

> Plaintiff shall be awarded the following elements of damage experienced in the past:
> Physical pain and suffering
> Loss of earning capacity for the enjoyment of life
>
> You shall also award compensation for the present case value of:
> Physical pain and suffering
> Loss of capacity for the enjoyment of life
> reasonably certain to be experienced by a party in the future
>
> Pain and suffering encompasses the physical discomfort cause[d] by an injury. Damages for loss of enjoyment of life compensate the injured person for the limitations placed on the abilities to enjoy the pleasures of life. Impairment of physical function prevents a person from living life in comfort by adding inconvenience or loss of physical ability.

Appellants contend that omitting mental and emotional pain and suffering as a specific element of Appellants' damages resulted in the jury's failure to compensate Mr. Dixon for his decreased ability to work, loss of sexual function, decreased activity level, and inability to pick up his wife's grandchild. Although conceptually physical pain and suffering, mental and emotional pain and suffering, and loss of enjoyment of life can all be encompassed within the general definition of pain and suffering, each of these types of damages are separate and distinct losses to the victim. *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 715 (Tenn.Ct.App.1999). "Damages for loss of enjoyment of life compensate the injured person for the limitations placed on his or her ability to enjoy the pleasures and amenities of life." *Overstreet*, 4 S.W.3d at 715-16. Courts have found that damages for the loss of enjoyment of life may include the inability to continue a particular career, *McAlister v. Carl*, 197 A.2d 140, 145 (Md.1964), to pursue recreational or family activities, *Sweeney v. Car/Puter Int'l Corp.*, 521 F.Supp. 276, 288 (D.S.C.1981), and to engage in normal sexual function. *Varnell v. La. Tech Univ.*, 709 So.2d 890, 896 (La.Ct.App.1998). Because we believe that the court's instruction on loss of enjoyment of life adequately addressed Appellants' proof, we find no error in the trial court's failure to expressly include mental and emotional suffering as an element of Appellants' compensable damages.

II. Deposition of Appellants' Chiropractor

Appellants next argue that the trial court erred in excluding from evidence a portion of the deposition testimony of Appellants' expert chiropractor, Dr. McIntosh. The exclusion of expert medical testimony rests within the sound discretion of the trial court and will not be disturbed unless it is based on an erroneous view of the law or it constitutes an abuse of discretion. *Benson v. N.*

Gopher Enter., Inc., 455 N.W.2d 444, 445-46 (Minn.1990). The challenged portion of the deposition provided:

> Q. Can you say with - in a reasonable degree of medical certainty the relationship of the - well, do you have an opinion based on a reasonable degree of medical certainty as to what caused the neck and back pain that you were treating [Mr. Dixon] for?
>
> MR. FEENEY: I'll object to the question, lack of foundation and lack of competence.
>
> THE WITNESS: Mr. Dixon had said that he was involved in an automobile accident. When I did my examination and took my x-rays, I found some old problem on the x-rays with some degeneration and disk degeneration, arthritis, which the accident would not have caused, but I also found - especially in the neck I found some new misalignment there that had no degenerative effect or no osteophytes, spurs in the area, which indicates to me that could possibly - most likely be a new injury to the area. And the area we're talking about is above an area where he had disk degeneration for some time.

In reviewing the record, we agree with the exclusion of Dr. McIntosh's testimony based on a lack of proper foundation. A trial judge is provided wide latitude in determining whether there is sufficient foundation upon which an expert may state an opinion. *Benson*, 455 N.W.2d at 446. An expert opinion has sufficient foundation if it is based on readily ascertainable facts. *Whitney v. Buttrick*, 376 N.W.2d 274, 277 (Minn.Ct.App.1985). In this case, there was no factual foundation for Dr. McIntosh's inference that the automobile accident caused Mr. Dixon's neck and back pain. Dr. McIntosh did not testify that he was provided with any information concerning the circumstances of Mr. Dixon's accident other than that an accident had occurred. Without understanding the circumstances of Mr. Dixon's accident, Dr. McIntosh cannot draw a proper causal connection between Mr. Dixon's alleged injuries and Ms. Cobb's alleged negligence. Thus, Dr. McIntosh's opinion was purely speculative and "an opinion based on speculation and conjecture has no evidentiary value." *Gerster v. Special Adm'r for Estate of Wedin*, 199 N.W.2d 633, 636 (Minn.1972).

III. MATERIAL EVIDENCE TO SUPPORT THE VERDICT

Appellants third assignment of error is that there was no material evidence to support the jury's verdict. Tenn. R. App. P. 13(d) states that "[f]indings of facts by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." The Tennessee Supreme Court explained the applicable standard of review in *D.M. Rose & Co. v. Snyder*, 206 S.W.2d 897 (Tenn.1947). Said the Court:

> While these issues involve a review of the evidence, such review is not to determine where the truth lies or to find the facts, that not being our province in jury cases. It is only to determine whether there was any substantial evidence to support the verdict; and it must be governed by the rule, safeguarding the constitutional right

> of trial by jury, which requires us to take the strongest legitimate view of all the evidence to uphold the verdict, to assume the truth of all that tends to support it, to discard all to the contrary, and to allow all reasonable inferences to sustain the verdict.

D.M. Rose & Co., 206 S.W.2d at 901. And if there is material evidence to support the verdict, the verdict and judgment must be affirmed, even if there is testimony or evidence supporting the appellant's position. *City of Chattanooga v. Ballew*, 354 S.W.2d 806, 809 (Tenn.App.Ct.1961).

A jury verdict reflecting zero damages where negligence has been determined in favor of the plaintiff, either by summary judgment, directed verdict, or a one-hundred-percent defendant fault finding, has been upheld in a number of cases reported in Tennessee and in sister jurisdictions.

In *Newsom v. Markus*, 588 S.W.2d 883 (Tenn.Ct.App.1979), this Court held:

> In the present lawsuit the entire cause of action was not submitted to the jury. The trial judge directed a verdict in favor of the plaintiff on the issue of liability, leaving to the jury to determine if the plaintiff suffered any personal injury, and if so to assess damages. This was proper because in order to support the action there must be not only the negligent act, but a consequential injury which is the gravamen of the charge of negligence. *Colsher v. Tennessee Electric Power Co.* (1935) 19 Tenn.App. 166, 84 S.W.2d 117. The fact that the issue of injury was left to the jury is shown by the following excerpts from the judge's charge:
>
> > At the end of all the proof in this cause the court has directed a verdict for the plaintiffs. That means to say that you have no issue in this case as to liability. The only issue in this case is the *nature and extent of the damage and injury*. (Emphasis added)
> >
> > . . .
> >
> > Now since I have directed a verdict on the part of liability, your only question is to damages. Under our law a party who has been injured as a direct and proximate result of the negligent act of another is entitled to recover an amount of money that you say would fairly and adequately compensate him or her *for the injuries that you find were negligently inflicted upon him or her*, taking into consideration the nature and extent of the injuries, their kind, character, and duration, the amount of mental and physical pain the plaintiff has suffered due to his or her injuries. (Emphasis added)
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> We, therefore, conclude that in the case of Mrs. Newsom the jury by its award of no damages found that Mrs. Newsom was not injured in the collision and that she did not suffer an aggravation of pre-existing injuries or disability. As heretofore noted there was material evidence before the jury upon which that finding could rest. It must be noted that the jury was directed to "find for the plaintiff" in each case. We,

> therefore conclude that the verdict in the case of Mrs. Newsom is not erroneous on its face.

Newsom, 588 S.W.2d at 887.

Summary judgment or a directed verdict against the defendant on negligence does not establish proximate cause for the injury suffered by the plaintiff. In *McDonald v. Petree*, 409 F.3d 724 (6th Cir.2005), a diversity jurisdiction case applying the law of Tennessee, Plaintiff appealed a defendant's verdict where evidence of Defendant's negligence was overwhelming. In affirming the defendant's verdict, the Sixth Circuit held:

> Mr. and Mrs. McDonald next argue that the district court abused its discretion in denying their motion for new trial. They argue that the only medical evidence presented was that of their expert, Dr. Geissler, and that the jury verdict was against the clear weight of the evidence. The district court denied Mr. and Mrs. McDonald's motion noting that although "no party seriously contends that Petree was not negligent in causing the accident," the jury did not have to accept Dr. Geissler's opinion and could have reasonably concluded that legal cause was lacking. (Order Den. Mot. for New Trial at 5-6, JA at 216-17.) This Court agrees.
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> Dr. Geissler testified that at least some of Mrs. McDonald's injuries were secondary to the accident. On the other hand, Dr. Geissler noted "significant arthritic changes" in Mrs. McDonald's knees that were unrelated to the accident. Furthermore, despite Mrs. McDonald's candor regarding several former and unrelated surgeries and conditions, Mrs. McDonald neglected to inform Dr. Geissler of her former knee surgery. The jury answered "No" to the two-part question of (1) whether Petree was negligent and (2) whether Petree's negligence legally caused Mrs. McDonald's injuries. Despite the overwhelming evidence of Petree's negligence, the jurors could answer "No" to this two-part question even if they believed that Petree was negligent but did not believe that Petree was the legal cause of Mrs. McDonald's injuries.
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> Dr. Geissler's expert opinion is not conclusive on the issue of causation, and the jury did not have to accept it as true. *See Davis v. Combustion Eng'g, Inc.*, 742 F.2d 916, 920 (6th Cir.1984). Moreover, "[w]itness credibility is solely within the jury's province, and this court may not remake credibility determinations." *L.E. Cooke*, 991 F.2d at 343.

McDonald, 409 F.3d at 731.

In *Blosfeld v. Hall*, 511 S.E.2d 196 (Ga.Ct.App.1999), the parties stipulated the negligence of the Defendant, Hall, and the case went to the jury on proximate cause and damages. The jury returned a defendant's verdict, and the Georgia Court of Appeals affirmed holding:

> In Georgia, a plaintiff cannot recover for injuries sustained as a result of a defendant's negligence unless the plaintiff shows that the defendant's negligence was the proximate cause of the injury. See *Pointer v. Cooley*, 191 Ga.App. 548(1), 382 S.E.2d 359 (1989); *McBryde v. Roberts*, 160 Ga.App. 416, 419(1), 287 S.E.2d 349 (1981); *Hughes v. Newell*, 152 Ga.App. 618, 620(2), 263 S.E.2d 505 (1979). "[E]ven if plaintiff has established that she has suffered certain substantial physical injuries and even if the nature of these injuries is consistent with her assertion they were the result of a motor vehicle collision, the evidence does not require a conclusion that plaintiff's injuries were proximately caused by defendant's negligence," *McBryde*, supra at 416-417, 287 S.E.2d 349.
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> "The subject of any injury [Blosfeld] sustained in this present case was fully explored by both sides. On appeal, we do not weigh evidence, for the jury has already done that; and once the jury has done so, every inference and construction in the evidence is indulged in favor of the verdict so as to uphold it. [Cits.]" *Pointer*, supra. Based on the evidence, the jury was authorized to conclude that Blosfeld's injuries were not proximately caused by Hall's negligence. The trial court did not err in denying Blosfeld's motion for new trial.

Blosfeld, 511 S.E.2d at 199.

In *Pearson v. Wasell*, 723 N.E.2d 609 (Ohio Ct.App.1998), the court granted Plaintiff a directed verdict on the issue of liability and submitted the case to the jury on proximate cause and damages. The jury returned a verdict for Defendant. In affirming the defendant's verdict, the Ohio Court of Appeals held:

> This court will not invade the province of the jury in determining the weight to be afforded opinion evidence rendered by an expert. It is the duty of a jury to determine whether the facts upon which an expert opinion is based have been proven by the greater weight of the evidence. *Camden v. Miller* (1968), 34 Ohio App.3d 86, 517 N.E.2d 253.
>
> Although a directed verdict was granted in favor of appellants on the issue of liability, the issues of proximate cause and damages properly remained to be determined by the jury. Based upon the testimony offered by the police officer who investigated the accident, appellant's admission that she did not seek medical attention until eight days after the accident, and the divergent opinions presented by expert testimony, there was competent, credible evidence from which the jury could conclude that appellant suffered no injury as a result of this accident warranting an award of damages. A judgment supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence. *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 638 N.E.2d 533.

Pearson, 723 N.E.2d at 616-17. *See also Ridgeway v. Teshoian*, 699 N.E.2d 1156 (Ind.Ct.App.1998); *Sanchez v. King*, 932 S.W.2d 177 (Tex.App.1996); *Johnson v. Cooper*, 507 S.E.2d 559 (Ga.Ct.App.1998).

After carefully reviewing the record, we conclude that the jury's verdict is likewise supported by material evidence. The testimony adduced at trial showed that Mr. Dixon did not seek treatment for his injuries until several days after the accident. He also did not miss a single day of work from the date of his accident in April 6, 2001 through his termination in January 2004. There was also evidence that Mr. Dixon had pre-existing multilevel disc degeneration in his spine as well as arthritis, which Dr. McIntosh testified was not caused by the accident. The office notes of Mr. Dixon's personal physician, Dr. Lawrence Wolfe, revealed that Mr. Dixon complained of chronic back pain as early as February 1995. Dr. Wolfe could not recall why he prescribed Mr. Dixon Mepergan, a strong narcotic pain pill, in March 2000, but he admitted that it could have been used to alleviate Mr. Dixon's back pain. Furthermore, the testimony of Mr. Dixon's medical expert, Dr. Hoos, was discredited by the fact that Dr. Hoos' assessment of Mr. Dixon's injuries was based on the assumption that Mr. Dixon had no back pain prior to the accident.

Based on the evidence, the jury could have reasonably concluded that Mr. Dixon's proven damages were attributable to his pre-existing back pain rather than to the accident. Although Appellants presented evidence otherwise, we are not able to re-weigh the evidence in order to determine where the truth lies. Instead, the weight and credibility to be accorded to a witness' statements are to be determined by the jury as the finder of fact. *Dunn v. Davis*, No. W2006-00251-COA-R3-CV, 2007 WL 674652, at *7 (Tenn.Ct.App. Mar. 6, 2007).

IV. Failure to Follow Jury Instructions on Damages

Appellants also contend that the alleged inadequacy of the jury's judgment indicates that the jury failed to follow the court's jury instructions on damages. "The amount of a verdict is primarily for the jury to determine. If it does not appear from the evidence that the verdict of the jury was influenced by prejudice, passion or caprice, or other improper influence, the award of the jury will not be reviewed by the appellate court." *Crutcher v. Davenport*, 401 S.W.2d 786, 787 (Tenn.Ct.App.1965) (citations omitted). The Tennessee Supreme Court has said:

> The rule of this court, that it will not disturb the verdict of a jury upon facts fairly submitted to them upon a correct charge, unless there is a great preponderance of evidence against the verdict, is based very largely upon the fact that a different rule governs the circuit judge in considering motions for new trials. The court attaches great weight to the fact that the circuit judge, having seen and heard the witnesses testify, and having submitted the case to a jury known to himself, has stamped the verdict with his approval by refusing to grant a new trial. Much of the importance and weight attached to jury trials proceeds from the presumption that an intelligent and learned circuit judge, accustomed to weighing evidence, has scrutinized the proof, looked into the faces of the witnesses, and indorsed the action of the jury. The

> integrity and value of jury trial will largely disappear, if circuit judges shall endeavor to avoid the duty imposed upon them by law in this regard. If he is dissatisfied with the verdict, he ought to set it aside; and this court has held that, where this dissatisfaction appears in the record, this court will do what he ought to have done,--grant a new trial. *England* v. *Burt*, 4 Humph. 399; *Jones* v. *Jennings*, 10 Humph. 428; *Nailing* v. *Nailing*, 2 Sneed, 631; *Vaulx* v. *Herman*, 8 Lea, 687.

Tenn. Coal & R.R. Co. v. Roddy, 5 S.W. 286, 288 (Tenn.1887).

Although we are aware of cases in which appellate courts of this State have granted reversals and new trials because of the inadequacy of verdicts, *see Kent v. Freeman*, 345 S.W.2d 252 (Tenn.Ct.App.1961); *Flexer v. Crawley*, 269 S.W.2d 598 (Tenn.Ct.App.1954); *W.T. Grant Co. v. Tanner*, 95 S.W.2d 926 (Tenn.1936), we do not believe that the facts of this case warrant such action. The award of zero damages unmistakably indicates that the jury had doubts as to the cause of Mr. Dixon's alleged damages. And the record supports a finding that Mr. Dixon's damages resulted from his pre-existing back pain rather than Ms. Cobb's negligence. Support for this finding is also found in the fact that the trial judge who listened to and saw the witnesses testify, reviewing their credibility and demeanor on the witness stand, approved the jury's judgment. We therefore find no merit to this assignment of error.

V. PREJUDICIAL TESTIMONY

Appellants lastly argue that the verdict should be set aside due to Defendant's counsel's inquiry as to whether Ms. Cobb was pregnant. We however find that Appellants waived this issue by failing to object to the allegedly prejudicial testimony at trial. By not objecting at trial, Appellants "failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error." Tenn.R.App.P. 36(a). "When a party does not object to the admissibility of evidence, ... the evidence becomes admissible notwithstanding any other Rule of Evidence to the contrary, and the jury may consider that evidence for its 'natural probative effects as if it were in law admissible.'" *State v. Smith*, 24 S.W.3d 274, 280 (Tenn.2000) (quoting *State v. Harrington*, 627 S.W.2d 345, 348 (Tenn.1981)).

Having found no material error below, we affirm the judgment of the trial court in all respects. The costs of appeal are assessed against Appellants, Mr. and Mrs. Dixon.

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WILLIAM B. CAIN, JUDGE